

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application)
)
 of)
) Docket No. 2009-0049
 WAI'OLA O MOLOKA'I, INC.)
)
 For review and approval of rate)
 increases; revised rate schedules;)
 and revised rules.)
)
 _____)

WAI'OLA O MOLOKA'I'S MEMORANDUM IN OPPOSITION
TO INTERVENOR COUNTY OF MAUI'S
MOTION FOR ISSUANCE OF SUBPOENAS

and

CERTIFICATE OF SERVICE

FILED
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PUBLIC UTILITIES
COMMISSION

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WAI'OLA O MOLOKA'I, INC. ("WOM"), by and through its attorneys, Morihara Lau & Fong LLP, submits this memorandum in opposition to the County of Maui's ("County") Motion for Issuance of Subpoenas, dated May 5, 2010 ("Motion"). This memorandum in opposition is timely filed in accordance with the Prehearing Conference Order issued by the Public Utilities Commission ("Commission") on April 29, 2010.

County's Motion for Subpoenas Should Be Denied For Same Reasons As Denial of West Molokai Association's Motion in Docket No. 2008-0048

In denying West Molokai Association's ("WMA") motion for subpoena in Docket No. 2009-0048, the Public Utilities Commission ("Commission") stated:

In its motion, WMA fails to satisfactorily demonstrate why the testimony it believes Mr. Orodener and Mr. Edwards will provide could not have been obtained during the discovery phase of this docket, through information requests or, if necessary, through a pre-hearing motion to compel responses. The Commission's procedures, which require the filing of written direct testimonies by

the parties, are not intended to allow parties to conduct "discovery" during the hearing.

Order Denying West Molokai Association's Motion for Issuance of Subpoenas, filed on May 10, 2010, at p. 5. The same reasoning applies here.

In its motion, the County argues:

The testimony of Daniel Orodener and Harold Edwards is necessary to ensure that the evidentiary record is fully developed. Thus far, the only testimony offered by WOM is the direct testimony of Robert O'Brien, a consultant retained by the utility to justify the permanent rate increase WOM seeks. Mr. O'Brien is not an employee of WOM or WOM's parent company, MPL. Yet, he is the only "authority" who signed off as the sponsor of various Responses to Information Requests on behalf of WOM.

Memorandum in Support of Motion at 2-3. The County further states:

As two former/current officers and employees of MPU and WOM, Harold Edwards and Daniel Orodener would have personal knowledge of the circumstances surrounding MPU's efforts to account for the water losses and any measures taken to correct the problems previously pointed out by the Commission.

Memorandum in Support of Motion at 4-5.

Similar to WMA, the County did not state why it could not obtain the testimony it believes Mr. Orodener and Mr. Edwards would provide during the discovery phase of this docket. It is clear from the County's statements that it is attempting to conduct during the hearing process the discovery that it neglected to conduct during the discovery or Information Request phase of this proceeding. Thus, for the reason the Commission denied WMA's motion for issuance of subpoenas, the County's Motion should also be denied.

Peter Nicholas Will Be Available at Evidentiary Hearing

The County “incorporate[d] by reference the reasons articulated by West Molokai Association for the issuance of subpoenas to Daniel Orodenker and Harold Edwards.” Memorandum in Support of Motion at p. 3.

As set forth in greater detail in Molokai Public Utilities Inc.’s Memorandum in Opposition to West Molokai Association’s Motion for Issuance of Subpoenae, filed on May 4, 2010 in Docket No. 2009-0048, the presence of Mr. Orodenker to testify on policy matters, and of Mr. Edwards with respect to the installation of the new water treatment plant, are unnecessary because Peter Nicholas, who holds top positions at Molokai Properties Limited (“MPL”), MPU and WOM, will be made available at the evidentiary hearing.

Mr. Nicholas’ availability, however, should not in any way be taken as a waiver of WOM’s right to raise objections as to the materiality, relevancy, or redundancy of the issues the County seeks to raise through the cross-examination of Mr. Nicholas.

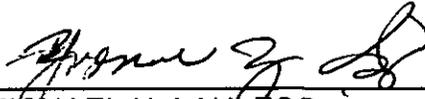
Additional Objection to Subpoena for Daniel Orodenker

One of the reasons WMA requested a subpoena for Daniel Orodenker was to have him clarify his responses to information requests with respect to MPL’s ownership and responsibility for maintenance of fire hydrants. It should be noted that this issue is irrelevant in this docket as there has been no information request or testimony with respect to fire hydrants within WOM’s service territory.

Conclusion

Based on the foregoing, WOM respectfully requests that the Commission reject the County's request for the issuance of subpoenas to Daniel Orodener and Harold Edwards.

DATED: Honolulu, Hawai'i, May 11, 2010.



MICHAEL H. LAU, ESQ.
YVONNE Y. IZU, ESQ.

Morihara Lau & Fong LLP
Attorneys for WAI'OLA O MOLOKAI, INC.

CERTIFICATE OF SERVICE

I (we) hereby certify that copies of the foregoing document were duly served on the following parties, by having said copies delivered as set forth below:

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DATED: Honolulu, Hawai'i, May 11, 2010.


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